

INDIVIDUALS WITH DISABILITIES EDUCATION ACT ("IDEA")
20 U.S.C. § 1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Edward E. Vance, Due Process Hearing Officer
14014 North 8th Place, Phoenix, Arizona 85022
phone (602) 938-1810 fax (602) 938-2163

In the Matter of:)	
	)	IMPARTIAL DUE PROCESS
R.B ("Student"),)	
	)	HEARING DECISION AND ORDER
Petitioner,)	
and	)	Hearing Dates: October 8, 9 & 10, 2002
	)	October 23, 24 & 30, 2002
WICKENBURG UNIFIED SCHOOL)	
DISTRICT ("District"),	)	Held at: MacLennan School
	)	260 West Yavapai Street
	)	Room #19
Respondent.	)	Wickenburg, Arizona 85301
	)	(October 8, 9 & 10, 2002)
)	
	)	Offices of M. Alex Harris, Esq.
	)	2999 North 44th Street
	)	Suite 303
)	Phoenix, Arizona 85018
)	(October 23, 24 & 30, 2002)
)	

Counsel for Petitioner: M. Alex Harris, Esq.
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Phoenix, Arizona 85018

Counsel for the Respondent: Patrice M. Horstman, Esq.
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PC
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An index of Student's providers is attached hereto to identify specific personnel providing services to Student. That index is designed to be detached before release of this Decision and Order as a public record.

INDEX OF PROVIDERS
R.B. v. Wickenburg Unified School District

District Consultant	Sheri D. Dollin, M.Ed.
District Occupational Therapist	---
District School	--- School
District Special Education Teacher	---
District Speech Therapist	---
Former Special Education Director	Toni Wayas
Music Therapist	--- (CCNS)
Special School Occupational Therapist	--- (CCNS)
Parent	---
Parents	---
Principal	---
Private Psychiatrist	---, M.D.
Psychologist (District)	---, Ph.D
Recreational Therapist	--- (CCNS)
Special Education Director	William R. Moran
Special School	Children's Center for Neurodevelopmental Studies (CCNS)
Special School Teacher	--- (CCNS)
Special School Speech Therapist	--- (CCNS)

I. INTRODUCTION AND PROCEDURAL HISTORY

Parent filed the request for due process (“Due Process Request”) in this matter on August 15, 2002, based on the issues set forth therein, as refined in the pre-hearing telephone conferences described below.

Two pre-hearing telephone conferences were held on September 9, 2002, and September 10, 2002, with Parent’s counsel, District’s counsel and a representative of District. Confirmation of those pre-hearing telephone conferences, and the procedures governing the hearing process in the due process hearing (“Due Process Hearing” or “Hearing”) were set forth in a letter from the Hearing Officer to the parties dated September 11, 2002, as clarified in a letter from the Hearing Officer to the parties dated September 12, 2002 (collectively, “Pre-Hearing Confirmation”).

During the telephone conferences, it was determined that the Due Process Hearing would take approximately three days, and due to scheduling conflicts and the availability of witnesses, District and Parent requested an extension of the 45 day time limitation for issuance of the final decision in this due process matter. The Hearing Officer agreed to extend the time period for conducting the Hearing and issuing a final decision and order until October 28, 2002, for good cause, due to scheduling conflicts that would otherwise prevent a fair hearing for both parties. When the Hearing in this matter had not yet been completed as of October 23, 2002 (the Hearing was finally completed on October 30, 2002), District requested an additional extension during the Due Process Hearing.¹ This extension was objected to by Parent. Due to the need to complete the Due Process Hearing before the final decision could be issued, the Hearing Officer agreed to extend the time period for conducting the Hearing, and issuing a final decision and order, until November 20, 2002, for

¹ See Transcript of Hearing, 10/23/02, at 195-196.

good cause, due to scheduling conflicts that prevented completing the Hearing, and issuing the final decision.

A. Due Process Issues

The due process issues to be determined in this case are set forth in the Due Process Request, as further clarified in the Pre-Hearing Confirmation, as follows:

1. Did the District violate Student's right to a free appropriate public education (FAPE) by:

(a) allegedly pre-determining Student's placement at District School on or before a May 15, 2002 meeting without input from Parent?

(b) allegedly informing Parent that District invested too much money to continue Student's education at Special School?

(c) allegedly holding an IEP meeting on August 6, 2002, without re-scheduling the meeting for a time and date that Parent could attend?

2. Does the August 2002 IEP (as defined below) prepared by District provide Student with a FAPE including:

(a) Can the District provide Student with a safe educational environment at District School?

(b) Is the proposed August 2002 IEP appropriate?

3. Is Parent entitled to reimbursement for past transportation expenses to Special School?

4. Is Student entitled to related services of transportation?

B. Evidence Introduced at Due Process Hearing

Testimony and documentary evidence were admitted at the Due Process Hearing. Eleven (11) witnesses testified at the Hearing. See Transcript of Due Process Hearing

(consisting of six volumes identified by hearing dates) (“Tr.”). Parent’s disclosure did not identify Parent as a witness for the Due Process Hearing, and District objected to Parent being called as a witness at the Hearing. Due to the importance of including Parent’s testimony to ensure Parent received a fair hearing, the Hearing Officer overruled District’s objection, and permitted Parent to testify.

The exhibits disclosed by District (District Exhibits A-1 through L, but excluding A-7 and B-1, which are addressed below), and exhibits disclosed by Parent (Parent Exhibits 1 through 17) were admitted into evidence. Additionally, the following exhibits were admitted into evidence at the Due Process Hearing: (1) District Exhibit A-7 (September 26, 2002, Psycho-Educational Evaluation of Student), District Exhibit M (District’s transcript of August 6, 2002 IEP meeting), District Exhibit N (notes of Special Education Director regarding contact with Parent), and District’s audio micro-cassette tape of August 6, 2002 IEP meeting (which was not identified by an exhibit number, herein “District IEP Tape”), and (2) Parent Photographs (labeled 1 through 18), Parent Exhibit 18 (placement folder checklist), Parent Exhibit 19 (the August 2002 IEP [as defined below] with notations thereon made by Parent, and Parent’s Transcript of the August 6, 2002 IEP meeting, both provided by Parent to Parent’s witness, the Special School Occupational Therapist)², Parent Exhibit 20-1 and 20-2 (2 audio micro-cassettes of August 6, 2002 IEP meeting), Parent Exhibit 21 (an audio micro-cassette of phone message from Special Education Director to Parent), Parent Exhibit 22 (police report dated August 14, 1999), and Parent Exhibit 23 (Police Report dated March 24, 2002).

² The August 2002 IEP and Parent’s transcript of the August 6, 2002 IEP meeting were included in the disclosed exhibits, but this copy of the August 2002 IEP included Parent’s handwritten comments and handwritten notations by Special School Occupational Therapist (and the transcript included handwritten notations by Special School Occupational Therapist).

Parent Exhibits 22 and 23 had been provided by District, but were offered into evidence by Parent. Additionally, District requested admission of an IEP prepared for Student on October 7, 2002. Parent objected to the admission of that IEP. The Hearing Officer admitted that document for the limited purpose of verifying the accuracy of the testimony by numerous witnesses regarding that document. Tr. 10/24/02, at 277. The IEP dated October 7, 2002, is referred to herein as District Exhibit B-1 (but is referred to in the Transcript as Exhibit 24). Additionally, Parent requested that a report from Private Psychiatrist (who did not testify at the Hearing) be admitted into evidence during redirect of Parent's testimony on October 24, 2002. The document was apparently provided to Parent on October 21, 2002, and had not been disclosed to District prior to Parent's request. District objected to the admission of the report, and the Hearing Officer upheld the District's objection; the expert report was not admitted into evidence. Tr. 10/24/02, at 287.

Due to the unanticipated length of the Due Process Hearing, both parties agreed to submit their closing statements in writing. On November 6, 2002, Parent timely filed "Defendant's Closing Brief" (incorrectly identified; herein, "Parent's Closing Statement"), and District timely filed District's Closing Statement ("District's Closing Statement").

II. FINDINGS OF FACT

1. Student is 8 years old, and has been determined to be eligible for special education as a student with autism. D. Exs. E-1, A-3 (Psychoeducational Report dated October 5, 1999) & A-7.

2. Student began attending District School as a kindergartener in 1999. Testimony of Special Education Director; D. Ex. E-6.

3. On May 31, 2000, an IEP meeting was held for Student, and an IEP was developed for the 2000-2001 school year ("May 2000 IEP"), providing Student with special education at the District School in a self-contained classroom, and, among other services, transportation. D. Ex. D-6.

4. As of August 2000, District did not have a certified special education teacher, and District Special Education Teacher had not yet completed the Special Education certification requirements. At that time, Parents insisted that Student not be placed at District School, and indicated an intent to seek legal help in ensuring Student was not placed at District School. Due to this, and District's concern about District Special Education Teacher's lack of certification at that time, Student was placed at Special School pursuant to an addendum to the May 2000 IEP, and Student began attending Special School in August 2000. D. Exs. D-2, H-8; Testimony of Former Special Education Director, and Parent.

5. During the August 24, 2000 IEP meeting to amend the May 2000 IEP, District offered to provide transportation for Student to and from Special School, but Parents wanted to transport Student in the mornings. The May 2000 IEP, as amended, provided for "afternoon transport from" Special School to Student's home. District hired a driver recommended by Parent to transport Student from Special School to Student's home in the afternoon. Although there was some evidence Parents may have transported Student for a day or two before the driver was hired, the evidence was not sufficient to establish that transportation was not provided as specified in the May 2000 IEP, as amended. Special School is approximately 90 miles from Student's home. D. Exs. D-2, H-8; P. Ex. 16; Testimony of Former Special Education Director, and Parent. [Parent's

testimony conflicted with this finding, but Parent's testimony was not credible on this issue; Parent asserted that District had agreed to locate someone to transport Student in the mornings in August, 2000, but this is inconsistent with the May 2002 IEP, as amended, and for two years, Parent made no request to District to transport Student in the mornings (and there was no evidence that Parent ever raised this with District during two later IEP meetings where transportation was discussed, or in other meetings held with District staff); additionally, Parent's testimony regarding IEP meeting discussions on this issue were inconsistent. See Testimony of Parent, Tr. 10/9/02, 647-650, 656-662, Tr. 10/23/02, 1019-1024, & Tr. 10/30/02, 504-520.]

6. On October 24, 2000, an IEP meeting was held to revise Student's IEP, and in that meeting Parents continued to express an intent to transport Student to Special School in the morning. The new October 24, 2000 IEP prepared by Special School staff provided, among other things, for transportation (noting "Parent transport as well"). D. Ex. D-1; Testimony of Former Special Education Director. See *also* FOF ¶ 5.

7. Beginning in the 2000-2001 school year, District met with autism experts and began working on staff training to develop an appropriate educational program for Student at District School. Testimony of Former Special Education Director.

8. On October 9, 2001, an IEP meeting was held at Special School, and an IEP was developed ("October 2001 IEP"), which provided, among other things, for:

- (1) Placement at Special School, with Home School Placement or as close as possible to child's home marked "No" due to intensive needs for individual interventions.

- (2) A notation that due to Student's intense sensory needs, a small setting with high staff to student ratio is needed.
- (3) Annual goals and short-term objectives for Student.
- (4) Related Services of Occupational Therapy for 60 minutes per week, Music Therapy for 60 minutes per week, Speech therapy for 30 minutes per week, and Recreation Therapy for 30 minutes per week.
- (5) Transportation (District bus in afternoon).

D. Ex. C-1; P. Ex. 6.

9. The October 2001 IEP had an anticipated duration through October 9, 2002, and included a written consent from Parent for special education services and implementation of the October 2001 IEP. D. Ex. C-1; P. Ex. 6.

10. At the October 9, 2001 IEP meeting, District agreed to Parents' request to continue Student's placement at Special School through the remainder of the school year due to Parents' expressed concern about Student's difficulty in transitioning to a new school during the school year; District continued to discuss transitioning Student back to District School with Parents during the 2001-2002 school year. Testimony of Special Education Director and District Occupational Therapist.

11. Student's placement at Special School costs District approximately \$32,000 per year (including the provision of extended school year services). Testimony of Special Education Director; P. Ex. 16 (invoices from Special School).

12. On or about October 16, 2001, Special School conducted a Recreational Therapy Assessment, which recommended recreational therapy for Student to increase gross motor skills for play/recreation, to teach appropriate use of toys, and to increase

social and communication skills; the assessment was performed at Parents' request. P. Ex. 4; D. Ex. C-1.

13. In February 2002, District staff met with Parent to get Parent's input on what District needed to put in place to provide an appropriate education for Student at District School. District continued with staff training, and District began acquiring specific equipment to develop an appropriate educational program for Student and other autistic children moving into District. Testimony of Special Education Director and District Occupational Therapist (and list of equipment included in District's Hearing Memorandum dated 10/1/2002).

14. On May 15, 2002, a meeting was held to discuss (1) what District still needed to do to be in a position to transition Student's placement back to District School, and (2) to ensure that District School had developed a program that was appropriate for Student's needs; the meeting was attended by Special Education Director, Principal, District Special Education Teacher, District Speech Therapist, Special School Teacher, Music Therapist, and Parent. See meeting notice, D. Ex. B-6 & H-7, and D. Ex. H-5, D. Ex. L & P. Ex. 8; Testimony of Special Education Director.

15. At the May 15, 2002 meeting, District staff's comments may have anticipated Student's placement at District School in the fall of 2002, since District had been working toward that goal for several years, and had been meeting with Parent with regard to that goal. Testimony of Special Education Director.

16. At the May 15, 2002 meeting, Parent expressed some specific concerns about District School regarding lunchroom and safety issues, but Parent did not oppose

the proposed placement of Student back at District School at the meeting. Testimony of Special Education Director and Parent.

17. On or about June 24, 2002, Parents wrote Special Education Director, stating that Parents thought the “proposed placement” of Student at District School was not appropriate; this was the first indication District had that Parents objected to the proposed placement back at District School. Parents’ June 24, 2002 letter raised new concerns that were not raised or discussed at the May 15, 2002 meeting, such as Student’s sensory needs and recreational therapy. D. Ex. J-1; Testimony of Special Education Director.

18. On or about July 1, 2002, Special Education Director left a phone message for Parents indicating that District wanted to move forward with planning on bringing Student to District School based on District’s investment of funds and training development to prepare an appropriate program at District School to meet Student’s needs. Special Education Teacher requested that Parent call to discuss Parent’s issues, but Parent did not attempt to contact Special Education Director by telephone. D. Ex. J-2; P. Ex. 10, at 1; Testimony of Special Education Director and Parent.

19. On or about July 9, 2002, Parent wrote Special Education Director in response to the phone message, and reiterated Parents’ objection to placement at District School (and requested that Student’s placement at Special School be continued). D. Ex. J-2; P. Ex. 10, at 2-3.

20. On or about July 22, 2002, District sent an IEP meeting notice to Parent for an IEP meeting scheduled for August 6, 2002. D. Ex. B-4, at 1; P. Ex. 11, at 2.

21. That same July 22, 2002 IEP meeting notice was sent to Special School, and on or about July 22, 2002, District's Special Education Director called Special School Teacher, and Special School Teacher indicated that Special School staff would be available to attend the August 6, 2002 IEP meeting. Testimony of Special Education Director. [Although Special School Teacher did not recall this telephone call, Special School Teacher did not dispute that it occurred, Tr. 10/10/02, at 1010.]

22. On or about July 30, 2002, Parent sent a letter to District indicating that Parent was unable to attend the IEP meeting scheduled for August 6, 2002, and that Parent was only available for an IEP meeting on August 26 to August 30, September 2 to September 5, and September 16 to September 20. Parent also requested that Student's IEP be maintained, "as is" until further notice. Parent did not provide District any reason why Parent was unable to attend any IEP meetings for almost four weeks. Special School was copied on Parent's letter. D. Ex. J-3; P. Ex. 11, at 4.

23. Parent intentionally refused to attend an IEP meeting for Student before August 12, 2002, the first day of school at District School. [This finding was made on the testimony of Parent; although Parent testified that Parent could not attend the scheduled IEP meeting because of lack of child care for Student, Parent never informed District that appropriate child care was the only reason Parent could not attend, Parent made no effort to re-schedule the meeting when Student's mother could care for Student, and did not inform District that Parent would have been available between July 30, 2002 and August 1, 2002, because Student was still attending Special School at that time. See Tr. 10/24/02, 308-311, 330-332] Testimony of Parent.

24. On or about July 31, 2002, District sent a letter to Parents indicating District was moving forward with the IEP meeting scheduled for August 6, 2002, based on the need to have an appropriate plan in place for Student before the start of the school year. Testimony of Special Education Director; D. Ex. J-4; P. Ex. 11, at 5.

25. District's Special Education Director believed that in order to provide FAPE to Student, Student's placement needed to be as close as possible to Student's home. Thus, once District had ensured that it had developed an appropriate program for Student at District School, Special Education Director thought it was necessary to convene an IEP meeting to determine the appropriate placement for Student. Special Education Director was also aware, from the October 9, 2001 IEP meeting, of Parents' prior concern about moving Student to a new school during the school year. Testimony of Special Education Director.

26. On or about August 1, 2002, District staff contacted Special School to confirm Special School's staff attendance at the August 6, 2002 IEP meeting; Special School Teacher left a phone message with District staff that Special School Teacher was now unavailable for the August 6, 2002 IEP meeting, and would not be available until August 15, 2002. District School classes began on August 12, 2002. Testimony of Special Education Director.

27. If Parent had not sent Special School Teacher a copy of Parent's July 30, 2002 letter (indicating that Parent was not available to attend the August 6 meeting) and Parent had not told Special School Teacher that Parent would not be attending the scheduled August 6, 2002 IEP meeting, then Special School Teacher would have attended the August 6, 2002, IEP meeting. Special School Teacher had been planning to

attend the August 6, 2002 IEP meeting until Special School Teacher received Parent's July 30, 2002 letter to District on or about July 31, 2002. Special School Teacher "assumed" that the IEP meeting would be re-scheduled because Parent was not going to attend the meeting; Special School Teacher received nothing from District that indicated the IEP meeting would be re-scheduled, and made no effort to contact District about whether the IEP meeting would be rescheduled before making other commitments for that day. There was no evidence that any other specifically identified Special School staff were informed of the August 6, 2002 IEP meeting by Special School Teacher. Testimony of Special School Teacher, Special School Speech Therapist, Recreational Therapist, and Parent; P. Ex. 11, at 4 (copied to Special School). [Some evidence in the record conflicted with a portion of this finding, as follows. Although Special School Teacher did not recall that Parent talked to her about Parent's inability to attend the August 6, 2002 IEP meeting, Parent testified that Parent did tell Special School Teacher that Parent was unable to attend, and Parent could not recall Special School Teacher's response. Additionally, Special School Teacher's testimony implied that Parent had told Special School Teacher that Parent could not attend because Parent had no one to watch Student. See Tr. 10/9/02, 1066 (& 984), Tr. 10/24/02, 314. Music Therapist presented conflicting testimony about whether Music Therapist was informed of the August 6, 2002 IEP meeting, and Music Therapist's testimony on that issue was not credible due to those inherent conflicts. Testimony of Music Therapist].

28. On or about August 5, 2002 [after additional correspondence was sent from Parent's and District's attorneys, including Parent's attorney's statement that Parent's attorney was not available to attend an IEP meeting until after September 20, 2002, and

District attorney's letter indicating District's willingness to reschedule the IEP meeting for any date convenient to Parents before school started on August 12, 2002], District sent another letter to Parents offering to accommodate Parents by speakerphone, indicating that the August 6, 2002 IEP meeting would be taped, and that an additional IEP meeting may be set when Parents were available. D. Ex. J -4 (C), & D. Exs. J-4(A), (B) & (E); P. Ex. 11.

29. On August 6, 2002, an IEP meeting was held for Student; the IEP meeting was attended only by District staff, specifically, Principal, Special Education Director, District Special Education Teacher, District Occupational Therapist, and District Speech Therapist, and an IEP was developed for Student ("August 2002 IEP"), which provides, among other things, for:

- (1) Placement in a self-contained classroom (at District School) with daily one-on-one aide support (and noting that the site selected is as close as possible to Student's home).
- (2) A notation that due to Student's intense sensory needs, a small setting with daily support staff would be beneficial in providing adequate services to Student.
- (3) Annual goals and short-term objectives for Student.
- (4) Related services of speech therapy 60 minutes weekly and Occupational Therapy 60 minutes monthly.
- (5) Transportation (daily).

D. Ex. B-4, at 5; P. Ex. 12, at 3.

30. On August 6, 2002, District did not have the most up to date information on Student's current levels of performance, and thus Student's present level of educational performance was not completely reflected in the August 2002 IEP. This performance information was unavailable to District because no one from Special School attended the August 6, 2002 IEP meeting, although District had appropriately notified Special School staff of the meeting, and requested that Special School staff attend the meeting. Testimony of Special Education Director, Special School Teacher, and other Special School staff.

31. District provided Parents with a copy of the August 2002 IEP and two (2) audiotapes of the August 6, 2002 IEP meeting shortly after it occurred. There were two audio tape recorders at the meeting, and, the tapes provided to Parent were from a voice activated recorder that cut off the first syllable of speech after a pause, and left Parent with the impression that the tape recorder had been stopped. During the Hearing, District provided a complete transcript of the IEP meeting prepared by a private transcription service. Parent himself also typed a transcript of the meeting from the tapes provided by District to Parent. There are minor differences between the contents of District's transcription and Parent's transcription, but the only substantive differences are due to (1) the difficulty in transcribing audio tapes of a meeting, (2) inaccuracies in identifying persons speaking, and (3) the fact that the audio tapes provided to Parent were recorded on a voice activated tape recorder. The difference in the length of the District transcript (prepared by a private transcription service) and the length of Parent's transcript (prepared by Parent) is the result of different font sizes, single spacing (Parent's

transcript) versus double spacing (District's transcript), and page formatting. Testimony of Special Education Director; D. Exs. M & District IEP Tape; P. Exs. 12, 20-1 and 20-2.

32. The August 2002 IEP and the October 2001 IEP contain similar goals, and those goals are appropriate for Student. Testimony of Special School Teacher, District Consultant and Psychologist (District). [There is some conflicting evidence in the record, but it was not credible. Parent provided conclusory testimony that the goals were not appropriate. Parent had provided a copy of the August 2002 IEP to one or more Special School staff, prior to the Hearing, with Parent's notation that the goals listed in the August 2002 IEP had been mastered. P. Ex. 19. However, there was no credible evidence from anyone trained in special education that any of the goals in the August 2002 IEP were not appropriate for Student (although some Special School witnesses erroneously referred to short-term objectives as goals). Additionally, contrary to the statements in Parent's Closing Statement, the goals in the August 2002 IEP are not two years old].

33. The August 2002 IEP was designed for Student's individual educational needs, and was designed to provide educational benefit to Student, even though, unknown to District on August 6, 2002, Student had met 2 of the 21 short term objectives listed in the August 2002 IEP. Many objectives listed in the August 2002 IEP appear similar to those in the October 2001 IEP but actually involve a higher cognitive or academic level, or were to be performed independently (without prompting). Testimony of Psychologist (District), District Consultant, Special School Teacher, Special School Speech Therapist, Recreational Therapist, and Music Therapist. [Some testimony from Special School personnel appears to be inconsistent with this finding, but it is not. Although testimony of Special School staff suggests that other short term objectives in

the August 2002 IEP had been met, these statements were (i) contradicted by other, more credible testimony, (ii) were so vague or conclusory that they were not persuasive, and/or (iii) were distinguishable on their face from the IEP objectives (i.e. failing to distinguish between “completing” a sentence, and “creating” a sentence). Special School staff also testified that the August 2002 IEP (or portions of the August 2002 IEP) would provide some educational benefit to Student. Special School staff’s uniform testimony that the August 2002 IEP would not provide FAPE to Student is simply a legal conclusion, and is given no weight on that basis.]

34. District staff is appropriately trained to provide Student the educational services identified in the August 2002 IEP. Testimony of Psychologist (District), District Consultant, Special Education Director, and District Occupational Therapist; D. Exs. H-3, & H-4.

35. District can provide similar services through occupational therapy as the recreational therapy services provided at Special School, and as recommended by the Recreational Therapy Assessment (see ¶ 12 above). The extent of occupational therapy provided in the August 2002 IEP, 60 minutes monthly, is the very minimum required for Student, and it is more appropriate for Student to have occupational therapy weekly. Testimony of District Occupational Therapist.

36. Music therapy does not teach music, but uses music to help students develop their skills and make progress on IEP goals; music therapy provides structure. Testimony of Music Therapist. There are no specific or unique goals and objectives of Student’s October 2001 IEP that require music therapy so Student’s goals and objectives

can be met with other special education or related services. Testimony of Psychologist (District).

37. District School's proposed classrooms for Student are appropriate for Student even if minor adjustments to visual stimuli is later determined by District staff to be needed if the visual stimuli is actually found to be over-stimulating for Student. Testimony of Psychologist (District) and District Consultant. [There was conflicting testimony about the meaning of "small setting" as required by the August 2002 IEP and the October 2001 IEP, but there was no convincing evidence that the District School classrooms were not appropriate for Student].

38. District School can provide a safe environment for Student with a one-on-one aide as provided for in the August 2002 IEP, notwithstanding expressed concerns about the reduced height of some small portions of the perimeter fencing around District School's playground, and the placement of the swing proposed to be used by Student in the District classroom. Testimony of Special Education Director and Psychologist (District). Parent's concerns about the perimeter fencing are misplaced given that (1) Special School staff only maintains control of Student on school outings on public sidewalks through staff's maintaining close physical proximity to Student, and (2) Student has demonstrated increased maturity in Student's response to verbal prompts. Testimony of Special School Speech Therapist and Special Education Director. Additionally, District has a smaller playground available for Student if the larger playground was found to be inappropriate for Student with Student in actual attendance at District School. The swing at issue can be easily moved, and/or furniture in the room where the swing is located can be easily moved to address any actual safety concerns

that might emerge with Student in actual attendance at District School. Testimony of Special Education Director, and District Occupational Therapist.

39. District places more emphasis on educational goals, and is more educationally based than Special School's program. Testimony of Special Educational Director, District Occupational Therapist, and Music Therapist.

40. On or about August 6, 2002, Parent requested reimbursement from District in the amount of \$11,138.40 (based on a rate of 34 cents a mile), for Parent's transportation of Student to Special School in the mornings from August 28, 2000, to August 2, 2002. D. Ex. J-5; P. Ex. 16.

41. District appropriately offered transportation as a related service to Parents while Student attended Special School (as reflected in the May 2002 IEP (as amended), the October 24, 2000 IEP and the October 2001 IEP); Parents voluntarily chose to transport Student to Special School in the mornings (except for certain mornings Parents requested that District transport Student, and District did provide such transportation). District was ready, willing and able to provide transportation to Student in the mornings, and the only reason District did not do so was because Parents declined those transportation services. D. Exs. C-1, D-1 & D-6; Testimony of Special Education Director, and Former Special Education Director.

42. On or about August 7, 2002, District School appropriately provided a Prior Written Notice to Parents indicating that District proposed to change Student's placement to District School, and that Special School placement was considered, but that Student's needs could be better met at District School. D. Ex. B-4, at 20; P. Ex. 12, at 1.

43. On or about August 9, 2002, Parent faxed the August 2002 IEP to Special School Teacher, with a cover sheet stating that “I received this today. It’s shocking what they want to do to [Student]. It will never happen as long as I’m alive.” Parent further indicated that Parent would see Special School Teacher on the 19th, the first day of classes for Special School. D. Ex. J-6; Testimony of Special School Teacher. Parent is adamantly opposed to Student’s placement at District School. Testimony of Parent.

44. On or about August 11, 2002, Parent filed a complaint with the Arizona Department of Education, regarding one of the issues addressed herein; whether District violated Student’s right to a FAPE by holding an IEP meeting on August 6, 2002, without re-scheduling the meeting for a time and date that Parent could attend. In that complaint, Parent sought to maintain Student’s placement at Special School. D. Ex. I-1.

45. On or about August 26, 2002, District wrote Parents to schedule a review of Student’s IEP with Parents; this was the first day Parents had indicated that Parents would be available for an IEP meeting. D. Ex. J-9. On or about August 28, 2002, Parent sent a fax indicating availability on September 30 (PM only), October 7 (PM only), and October 11 (AM or PM). D. Ex. J-10. The scheduled IEP meeting was initially set for September 30, 2002, but did not take place until October 7, 2002, due to a change in Parent’s availability. D. Exs. J-11, J-12, J-13 & J-14.

46. In mid-September, 2002, Parent provided a copy of the August 2002 IEP with Parent’s handwritten notations, among others, that each of the goals therein had been “mastered”, and a copy of Parent’s transcription of the August 6, 2002 IEP meeting to at least three members of Special School staff (Special School Occupational Therapist, Special School Teacher, and Music Therapist). [Parent could not recall how many copies

were provided]. Additionally, Special School staff either met together or discussed Student's August 2002 IEP with each other prior to the Hearing. Special School staff's testimony consistently raised certain alleged specific deficiencies in the August 2002 IEP that were also consistent with alleged deficiencies raised by Parent (for example, that an objective set at 50% is like tossing a coin, that the classroom set up at District School was inappropriate for Student, and Student's propensity to run away). Special School staff often volunteered such information during their testimony even when the information was not responsive to the question asked. The strong similarity, or "rehearsed" nature, of the testimony by Special School staff reduced the credibility of all Special School staff because it was sometimes unclear whether such testimony was based on personal knowledge, and the testimony was often outside of the area of expertise of the witness. Testimony of Special School Speech Therapist, Special School Teacher, Special School Occupational Therapist, Recreational Therapist, Music Therapist, and Parent.

47. On or about September 26, 2002, Psychologist (District), who specializes in early childhood autism, conducted a psycho-educational evaluation on Student [for Student's three year reassessment required by IDEA]. Psychologist (District) contracted with District to provide Student's re-evaluation, and had not been previously employed by District. To perform the evaluation, Psychologist (District) observed Student at Special School and conducted specific tests. Psychologist (District) determined that Student's behavioral presentation and history is consistent with the diagnosis of Autism and Moderate Mental Retardation. Psychologist (District) also provided extensive recommendations for socialization, educational treatment, communication skills and specific behavioral difficulties. D. Ex. 7; Testimony of Psychologist (District).

48. On October 7, 2002, another IEP meeting was held for Student. Numerous witnesses testified regarding the discussions in the October 7, 2002 IEP meeting, and the contents of the IEP developed at the October 7, 2002 IEP meeting ("October 2002 IEP"). Hearing Officer admitted the October 2002 IEP for the limited purpose of verifying the accuracy of such testimony. The changes that were made to the August 2002 IEP, pursuant to the October 7, 2002 IEP meeting, were based on additional information on Student's current level of performance provided by Special School staff in that meeting, the updated evaluation of Student by [and input of] Psychologist (District), and other input of the IEP team and meeting participants. No evidence was introduced that would indicate that the October 2002 IEP is inappropriate for Student, and testimony was introduced about the appropriateness of certain portions of the October 2002 IEP. Among other things, the October 2002 IEP provides for 60 minutes per week of occupational therapy. Testimony of Psychologist (District), Special Education Director, Special School staff, and other District staff; D. Ex. B-1.

49. Parent did not object to the October 7, 2002 IEP meeting before it was held or request that October 7, 2002 date for the IEP meeting be re-scheduled, either before or after the dates were set for the Due Process Hearing. Parent then only attended the first hour and a half of the October 7, 2002 IEP meeting although the date and time of the meeting had been selected by Parent based on Parent's availability. Testimony of Parent; D. Exs. J-10 through J-13, & J-15. The meeting was continued after Parent left because of the difficulty in scheduling Special School staff, Psychologist (District), District Consultant and District staff for another IEP meeting. Testimony of Special Education Director.

50. During the Hearing (on October 23, 2002), Parent objected to the October 7, 2002 IEP meeting on the grounds that (1) Parent was not able to attend the entire meeting because the Due Process Hearing was set for October 8, 2002, and (2) that it was inappropriate for an IEP meeting to be set while a due process is pending. Tr. 10/24/02, 140-144.

51. District has not yet hired or specifically identified the one-on-one aide required for Student's August 2002 IEP due to Student's continued stay put placement at Special School. Testimony of Special Education Director. [Parent's allegation that District had hired a developmentally handicapped person as Student's one-on-one aide was not supported by any credible evidence].

52. District stipulated that Student is entitled to transportation as a related service, and transportation is included in the August 2002 IEP. Tr. 10/9/02, at 333.

III. CONCLUSIONS OF LAW; RATIONALE

A. Burden of Proof.

The Ninth Circuit Court of Appeals has consistently held that the school has the burden of proving compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1400, et. seq., at the Due Process Hearing. *Seattle School District v. B.S.*, 82 F.3d 1493, 1498 (9th Cir. 1996); *Clyde K. Ex rel. Ryan K. v. Puyallup School District*, 35 F.3d 1396, 1398 (9th Cir. 1994). Burden of proof is the duty of affirmatively proving a fact in dispute. District has the burden of proving, by a preponderance of the evidence, that District has complied with the requirements of IDEA, and provided a free appropriate public education ("FAPE") to Student.

B. Free Appropriate Public Education ("FAPE")

The United States Supreme Court has established a two-part test to determine whether a FAPE is provided. First, have the procedures set forth in IDEA and its regulations been complied with. Second, is the IEP developed through these procedures "reasonably calculated to enable the child to receive educational benefits." *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982).

1. Alleged Procedural Violations

Failure to follow the procedures set forth in IDEA can result in a denial of FAPE if such failure either (1) results in the loss of educational opportunity, or (2) seriously infringes the parents' opportunity to participate in the IEP formulation process. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir.1992).

a. Determination of Placement at District School

District did not pre-determine Student's placement at District School on or before May 15, 2002, without input from Parent. For some time, District envisioned Student's return to District School from Special School once District had a fully certified special education teacher, and appropriate staff training and equipment to provide FAPE to Student at District School. FOF ¶¶ 7, 10 & 13. District moved forward with appropriate staff training, the purchase of equipment, and meeting with Parent and Special School staff on May 15, 2002, to ensure that Student's specific needs could be addressed at District School (and to identify any assistance needed for Student to change schools). FOF ¶¶ 7, 13-15. District's planning for Student's placement back at District School did not constitute a change of placement for Student.

District met with Parent on May 15, 2002, to ensure District had addressed, or could address, any additional concerns of Parent about District's ability to provide FAPE to

Student before District sought to change Student's placement to District School. FOF ¶ 14. Parent was given the opportunity to provide input on District's autism program, and to participate in identifying what was needed for Student, both prior to and at the May 15, 2002 meeting. FOF ¶¶ 13-14. At the May 15, 2002 meeting, Parent voiced some concerns that District intended to address, but Parent did not object to the goal of placement of Student at District School. FOF ¶ 16. It is not surprising that District staff would have anticipated Student's placement at District School in the fall of 2002, since District had been working toward that goal for several years, and had been meeting with Parent with regard to that goal. FOF ¶ 15. However, District did not make a placement decision for Student until the IEP team met on August 6, 2002. District did not fail to follow the procedures required by IDEA before or at the May 15, 2002 meeting with regard to this issue.

b. Statement Regarding District's Investment of Funds

District did not inform Parent that District invested too much money to continue Student's education at Special School. In response to Parents' written request for placement of Student at Special School for the 2002-2003 school year, Special Education Director did indicate to Parent that District had invested too much time and funds in preparing District School to meet Student's educational needs to simply agree to continued placement at Special School. FOF ¶ 18. In fact, District's Special Education Director believed that Student's placement at District School was a more appropriate placement for Student under IDEA, based on IDEA's least restrictive environment requirements, because it was Student's neighborhood school. FOF ¶ 25. Special Education Director's statement to Parent does not constitute a procedural violation of FAPE.

Additionally, cost is an appropriate factor to consider in determining the least restrictive environment for Student as long as it is considered along with other

considerations. See *Sacramento City Unified School District v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994) (indicating costs of mainstreaming is one of four considerations in determining whether a placement is appropriate). It is not inappropriate for District staff to expend funds to develop an appropriate educational program for Student at District School, and then to decide not to approve Parent's request for Student's continued placement at Special School without holding an IEP meeting to consider whether District School was an appropriate placement for Student.

c. Holding August 6, 2002 IEP Meeting Without Parent

District did hold an IEP meeting on August 6, 2002, without Parent, but Parent was afforded a reasonable opportunity to attend that IEP meeting. In scheduling an IEP meeting, District is obligated to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.345(a). An IEP meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. 34 C.F.R. § 300.345(d). District has an obligation to hold an IEP meeting if District believes that a change in Student's IEP may be necessary to ensure FAPE. 20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.343(c).

District sent an appropriate notice of the scheduled August 6, 2002 IEP meeting to Parents more than two weeks before the meeting, offered to reschedule the meeting at another date and time prior to the beginning of the school year, and offered participation telephonically. FOF ¶¶ 21 & 28. Parents refused to make themselves available for an IEP meeting for almost one month to prevent District from holding an IEP meeting before the

beginning of the 2002-2003 school year. FOF ¶ 23. Further, Parents also ensured that Special School staff did not attend or participate in the August 6, 2002 IEP meeting. FOF ¶ 27. At the same time, District had reasonably concluded that such a meeting was necessary prior to the beginning of the school year given (1) prior requests by Parents that Student's placement not be changed in the middle of the school year based on Student's difficulties in moving to another school during the school year, and (2) District's belief that District had the current ability to provide FAPE to Student at District School, Student's neighborhood school. Although Parent stressed that the October 2001 IEP remained in place (based on its anticipated duration through October 9, 2002), IDEA anticipates review of a child's IEP not less than annually, and requires additional revisions as appropriate. There is no right to have an IEP remain in place for an entire year. There should be as many IEP meetings a year as any one child may need. See Appendix A to IDEA Regulations, No. 20.

Based upon the unusual, specific facts of this case, District afforded Parents a reasonable opportunity to participate in the August 6, 2002 IEP meeting. The Ninth Circuit has recognized that the IDEA procedures, which provide for meaningful parent participation, are particularly important. *Amanda J. v. Clark County School District*, 260 F.3d 1106 (9th Cir. 2001). However, this is an unusual case where Parents had no intent to attend an IEP meeting before the beginning of the 2002-2003 school year regardless of District's attempts to include parental participation. Parents cannot force District to commit a procedural violation by Parents' determined efforts not to reasonably cooperate with District. "The law ought not to abet parties who block assembly of the required team and then, dissatisfied with the ensuing IEP, attempt to jettison it because of problems created by their own obstructionism." *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990) (noting

the parents' studied lack of cooperation with ongoing attempts to develop an IEP in a unilateral placement dispute).³ There was no procedural violation by District's holding the August 6, 2002 IEP meeting without re-scheduling it sometime after August 26, 2002, so Parent could attend. Moreover, as addressed below, District continued to seek Parents' input on the August 2002 IEP to ensure Student had the most appropriate IEP for Student.

d. Other Alleged Procedural Violations

During the Hearing, Parent raised two other procedural issues, and District has also requested that these issues be determined. See District's Closing Statement, at 19-21.

Parent raised an objection during the Due Process Hearing to the appropriateness of the October 7, 2002 IEP meeting. FOF ¶ 50. Parent objects to the October 7, 2002 IEP meeting because Parent could not attend the entire meeting, and because the meeting was held while this due process proceeding was pending. There is no procedural violation of IDEA based on the October 7, 2002 IEP meeting.

There is extensive evidence in the record of District's attempt to accommodate Parent in scheduling the October 7, 2002 IEP meeting, and Parent made no request that the meeting be re-scheduled either before or after the Hearing dates were set. FOF ¶¶ 45 & 49. Additionally, the Hearing dates were set by agreement of both parties during the pre-hearing telephone conferences in this matter. District unequivocally met its obligation to ensure Parents were given an opportunity to attend the October 7, 2002 IEP meeting, and to schedule that meeting at a mutually agreed on time and place. 34 C.F.R. § 300.345(a). Parent voluntarily left the October 7, 2002 IEP meeting, and District was not required to terminate the meeting when Parent chose to no longer attend.

³ Parent's Closing Statement includes numerous misstatements about both the facts and the holding of this case.

IDEA and its implementing regulations do not prohibit District's holding an IEP meeting during the pendency of Parent's Due Process Request as long as Student's stay put placement is not changed without Parents' consent. District held the October 7, 2002 meeting to attempt to get appropriate input from Parents and Special School staff to ensure Student's needs would be met by the August 2002 IEP because Parents and Special School staff did not attend the August 6, 2002 IEP meeting. Holding the October 7, 2002 meeting was consistent with District's obligation to revise Student's IEP as appropriate. 20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.343(c). Additionally, District is obligated under IDEA to perform a reevaluation of Student at least once every three years. 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536. District properly obtained the Psychoeducational Evaluation from Psychologist (District) for that purpose. District is further obligated to revise Student's IEP to address the results of such reevaluation. 20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.343(c). Thus, District would also have been required to schedule an IEP meeting to address the results of that evaluation, which was also used at the October 7, 2002 IEP meeting to formulate the October 2002 IEP.

Parent also raised an objection during the Hearing to audio tapes provided by District to Parent of the August 6, 2002 IEP, and the differences in written transcripts produced from a tape of the meeting retained by District, and the tapes provided to Parents. See FOF ¶ 31; Tr. 10/23/02, 126-139. IDEA and its implementing regulations do not address the use of audio recording devices at IEP meetings, and do not authorize or prohibit the recording of an IEP meeting. See Appendix A to IDEA Regulations, No. 21. District volunteered to provide audiotapes and, later provided a transcript of the August 6, 2002 IEP meeting, to Parent, but District was not required by law to tape the meeting. There were no substantive inaccuracies in the audiotape provided to Parent, and there was nothing inappropriate with

regard to District's provision of the audiotapes to Parent, or in District's later provision of the transcript of the meeting. See FOF ¶ 31.

District prevails on Parent's issue number 1(a), (b), and (c) [and (d) as raised in the Due Process Hearing, by Parent], for due process.

2. Provision of FAPE

The August 2002 IEP is "reasonably calculated to enable" Student "to receive educational benefits." *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). The August 2002 IEP was appropriately designed at the time it was prepared, and the goals and goal achieving methods were reasonably calculated to confer Student with a meaningful educational benefit. See *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir.1999) ("We do not judge an [IEP] in hindsight"). District is obligated to provide only "a basic floor of opportunity" through a program individually designed to provide educational benefit to Student. *Union School District v. Smith*, 15 F.3d 1519, 1524 (9th Cir. 1994).

In this case, the goals and objectives of the August 2002 IEP were individually designed to provide educational benefit to Student. FOF ¶ 33. Although the August 2002 IEP was not perfectly designed in compliance with Student's present educational levels, it was reasonably calculated to provide Student with meaningful educational benefit. See *O'Toole v. Olathe District Schools*, 144 F.3d 692 (10th Cir. 1998) (noting shortcomings in IEP did not mean that it was not calculated to confer educational benefit).

Additionally, District's placement at District School is appropriate because it is reasonably calculated to provide Student with educational benefits. See *Gregory K. v. Longview School District*, 811 F.2d 1307, 1314 (9th Cir.1987). In determining the educational placement of a child with a disability, District is required to ensure that: (1) the child's placement is as close as possible to the child's home, and (2) unless the IEP of a

child with a disability requires some other arrangement, that the child is educated in the school that he or she would attend if nondisabled. 34 C.F.R. § 300.552(b)(3) & (c). Once District was in a position to provide FAPE to Student at District School, it was appropriate for District to seek to do so.

Under the IDEA, a "free appropriate public education" includes not only special education, but also "related services." 20 U.S.C. §1401(8). Related services include such developmental, corrective and other supportive services (such as speech-language services, occupational therapy, and recreation) as are required to assist a child with a disability to benefit from special education. 20 U.S.C. s 1402(22); 34 C.F.R. §300.24(a).

The August 2002 IEP does not include recreational therapy previously provided to Student, but District's Occupational Therapist can provide comparable related services as provided by a recreational therapist. FOF ¶ 35. However, District must ensure that the occupational therapy services provided to Student are sufficient for this purpose. District Occupational Therapist testified that the 60 minutes of occupational therapy per week provided by the August 2002 IEP was the very minimum required for Student and that it was more appropriate for Student to have 60 minutes weekly (the direct occupational therapy requirements provided in the October 2002 IEP). FOF ¶¶ 35 & 48. Although the occupational therapy services set forth in the August 2002 IEP were minimally sufficient to satisfy FAPE based on the scope of District's knowledge at that time, District must ensure that appropriate occupational therapy services, based on input from Special School staff, are provided to Student in implementing Student's current IEP (the October 2002 IEP).

The August 2002 IEP does not include music therapy, but there are no goals or objectives in the August 2002 IEP (or Student's October 2001 IEP) which require musical therapy.. See FOF ¶ 36. There was also evidence that District employs a more

educationally based, rather than services based program, than Special School. FOF ¶ 39. Additionally, the determination of the appropriate methodology to be used in teaching a child with special needs is left to the schools and the experts they employ. See *Rowley*, 458 U.S. at 208; *Pitchford ex rel. M. v. Salem-Keizer School District*, 155 F.Supp.2d 1213, 1232 (D. Ore. 2001). Based on the foregoing, there was no evidence that music therapy is required to allow Student to benefit from special education, so music therapy is not a required related services for Student. 20 U.S.C. s 1402(22); 34 C.F.R. §300.24(a).

District established that District can provide Student with a safe educational environment at District School. FOF ¶ 38.

District prevails on Parent's issue number 2(a) and (b) for due process.

C. Rights to Transportation

IDEA requires District to provide related services of transportation for travel to and from school. 20 U.S.C. § 1402(22); 34 C.F.R. §300.24(a); 34 C.F.R. §300.24(b)(15)(i). Parent may be entitled to reimbursement for such related services if District failed to provide such services, and the services provided by Parent were appropriate under IDEA. See *School Committee of the Town of Burlington v. Department of Education*, 471 U.S. 359, 370, 105 S. Ct. 1996, 2003 (1985).

District offered to provide transportation services for Student's transportation to and from Special School, and did provide transportations services to the extent accepted by Parents. FOF ¶¶ 5-6, 8 & 41. Parents unilaterally decided that they would transport Student to Special School most mornings, and Parents provided that transportation except for some mornings when Parents requested District to provide transportation, and District did so. District was ready, willing and able to provide such transportation services. FOF ¶ 41. IDEA does not require reimbursement for related services that are offered, and not agreed

to by parents. On these facts, Parents are not entitled to any reimbursement for transportation. District prevails on Parent's issue 3 for due process.

The August 2002 IEP provides for transportation of Student to and from school. District stipulated that Student was entitled to transportation as a related service. Since Parent's fourth issue for due process was not an issue, no party prevails on this final issue.

D. District Closing Statement Issue

In District's Closing Statement, District requested that the Hearing Officer make a specific finding that the August 2002 IEP, both before and after the October 2002 IEP (which District labels an "Addendum") provides FAPE to Student. The scope of the Due Process Hearing is limited to determining the issues raised in the Due Process Request, as further determined in the Pre-Hearing Confirmation. See *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458, 1465 (9th Cir. 1996) [citing 20 U.S.C. § 1415(b)(2)]. Additionally, testimony on the specific issue of whether the October 2002 IEP provides FAPE to Student was not admitted.

As noted above, it has been determined that the August 2002 IEP provides FAPE to Student. The changes that were made to the August 2002 IEP, pursuant to the October 7, 2002 IEP meeting, were based on additional information on Student's current level of performance provided by Special School staff in that meeting, the updated evaluation of Student by [and input of] Psychologist (District), and other input of the IEP team and meeting participants. FOF ¶ 48. Thus, the October 2002 IEP is more specifically designed to meet Student's current, individual needs than the August 2002 IEP because additional information on Student's needs was provided for consideration by the IEP team. Based on the jurisdictional status of this case, the Hearing Officer cannot make a legal determination that the October 2002 IEP is appropriate for Student. However, evidence

introduced at the Hearing indicates that the October 2002 IEP is even more appropriate for Student than the August 2002 IEP. As such, placement at District School continues to be appropriate.

E. Arizona Regulation Findings

The Arizona regulations governing due process standards for special education require that a hearing officer render findings of fact and a decision on specific identified issues. Ariz. Admin. Code § R7-2-405(H)(4). Those specific issues are addressed as follows:

(i) There was no evidence that the evaluation procedures utilized in determining Student's needs have not been appropriate in nature and degree.

(ii) The diagnostic profile of Student on which the placement under the IEP was based is substantially verified. See FOF ¶¶ 1 & 47.

(iii) The evidence presented, and the conclusions of law set forth herein, establish that Student's rights have been fully observed.

(iv) Based on the foregoing, Student's placement at District School has been determined to be appropriate to the needs of Student.

(v) The placement of Student in the special education program is with the written consent of Parent. FOF ¶ 9.

IV. ORDER

IT IS ORDERED that:

(1) Since the August 2002 IEP provides FAPE to Student and placement at District School is appropriate for Student, District shall immediately implement Student's current IEP at District School.

(2) Parent's request for reimbursement of transportation expenses is denied.

V. APPEAL

Either party has the right to appeal this Decision to the Office of Administrative Hearings within thirty five (35) calendar days after receipt of this Decision. A.A.C. § R7-2-405(H)(5). Requests for appeal must be submitted in writing to: Dispute Resolution Coordinator, Arizona Department of Education, Exceptional Student Services, 1535 W. Jefferson, Phoenix, Arizona 85007. A.A.C. § R7-2-405(J)(1).

Ordered this 19th day of November 2002.

Edward E. Vance
Due Process Hearing Officer